

Legal Notice

NOTICE OF TENTATIVE DETERMINATION OF 401 CERTIFICATION WITH CONDITIONS

The Department of Environmental Quality is providing notice of its tentative determination to issue a certification with conditions pursuant to Section 401 of the federal Clean Water Act, 33 U.S.C. 1341, to Symbiotics, L.L.C. ("Symbiotics") for a new hydroelectric facility on the Clark Canyon Dam in south-west Montana.

Concerned persons may access the tentative certification at the Department's WEB site <http://www.deq.mt.gov/wqinfo/Standards/Index.asp>, or request a copy of the tentative determination of 401 certification with conditions, or submit their data, views, or arguments in writing to the Department of Environmental Quality, Attention David L. Feldman, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; or faxed to (406) 444-6836; or e-mailed to dfeldman@mt.gov, no later than 2 March 2009. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

Unless a written request for a hearing is filled with the Department within 14 days of the publication date of this notice (by 13 February 2009) the Department's decision will be final without public hearing.

Symbiotics has applied to the Federal Energy Regulatory Commission (FERC) for licensing of this new hydroelectric facility ("the Project") under the Federal Power Act, (16 USC §791a et seq.). FERC has given the project the number 12429. Symbiotics's address is P.O. Box 535, Rigby, ID 83442.

Section 401(a) of the federal Clean Water Act, 33 USC §1341, requires that any applicant for a federal license or permit to conduct an activity which may discharge into navigable waters must provide the licensing or permitting agency with a certification from the state in which the discharge originates. The certification must state that any such discharge complies with certain sections of the Clean Water Act and corresponding state water quality laws including state water quality standards. Section 401(d) further provides that the certification must set forth any limitations or conditions necessary to assure the applicant complies with any applicable effluent limitations, other limitations, monitoring requirements and other appropriate requirements of state law related to water quality.

The Department of Environmental Quality has authority to issue 401 certifications for the State pursuant to Administrative Rules of Montana (ARM) 17.30.101 through 109.

The Beaverhead River and Clark Canyon Reservoir at the site of this hydroelectric facility are classified B-1. Waters classified B-1 must be maintained suitable for drinking, culinary and food processing purposes after conventional treatment; bathing, swimming, and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply. ARM 17.30.623.

On December 31, 2008, Symbiotics submitted its application to the Department for 401 certification of its Clark Canyon Hydroelectric Project FERC No. 12429 (“the Application”). The Department has completed its examination of the Application, Pre-Application Document (PAD), the Clark Canyon Preliminary Licensing Proposal, studies submitted in support of the Application and all other available pertinent information and finds there is sufficient information for the Department to reach its decision.

Based upon this examination, the Department has determined that there is reasonable assurance that the licensing and reasonable operation of this hydroelectric facility in accordance with the conditions listed below would not result in a violation of water quality standards, any applicable effluent limits, other limitations, monitoring requirements or other appropriate requirements of state law related to water quality.

This approval is limited to and includes “the Project” described in “the Application.” All modifications of “the Project” that may affect water quality must be reviewed and approved by the Department.

The following conditions are hereby included in this certification:

1. SYMBIOTICS shall continue the pre-certification monitoring plan for a minimum of five (5) years after the project is online. The plan will be modified with provisions to continue monitoring dissolved oxygen, temperature, and total dissolved gas levels while discharging between July and October beyond the initial five year time period. The Department will determine if monitoring will continue beyond the initial five (5) year time period based upon the previous results.
2. SYMBIOTICS shall submit a plan six (6) months prior to beginning construction to the Department to monitor the Clark Canyon Reservoir and the Beaverhead River for turbidity, total dissolved gas, dissolved oxygen, and temperature during project construction.
3. Based upon the provisions outlined by MCA 75-5-306 (2) related to “reasonable operation of dams,” SYMBIOTICS shall maintain minimum dissolved oxygen level at saturation (approximately 7.5 mg/L or higher, depending upon the temperature of the reservoir water at the intakes) between 1 June and 31 August while discharging to the Beaverhead River. For the remainder of the year, minimum dissolved oxygen levels shall be maintained at or above 8 mg/L downstream of the project while discharging to the Beaverhead River.
4. SYMBIOTICS shall maintain total dissolved gas levels at 110%, or lower downstream of the project while discharging into the Beaverhead River.
5. SYMBIOTICS shall submit a plan of project design engineering modifications to the Department that will maintain dissolved oxygen levels prescribed above in condition three (3) after the project is initiated. The plan will be submitted to the Department at least six (6) months prior to initiating project construction.
6. SYMBIOTICS shall notify the Department and the Montana Department of Fish Wildlife

and Parks in writing not less than two (2) weeks prior to commencing any construction activity within the Project boundary which may result in a discharge of pollutants to state waters and notify the Departments within seven (7) days after completion of any construction activity.

7. SYMBIOTICS shall notify the Department and the Montana Department of Fish Wildlife and Parks within twenty-four (24) hours of any un-authorized discharge of pollutants to state waters within the Project boundary.

8. SYMBIOTICS shall allow the Department reasonable entry and access to the Project and review of appropriate records in order to determine compliance with conditions of this certification.

9. SYMBIOTICS shall obtain all permits, authorizations and certifications required by federal, state or local laws, regulations or ordinances prior to the commencement of any activity that could violate Montana's water quality standards. The Department reserves the authority under this certification to require plans, corrective actions and monitoring necessary to correct water quality violations that may result from operation, maintenance or construction associated with the Project.

10. Should the Project be found, at any time, not to be in compliance with any of the conditions of this certification, or should the permittee construct or operate this project in any way other than as specified in the application or supporting documents, as modified by the conditions of this certification, then the terms of this certification shall be considered to have been violated.

11. This certification shall expire upon the assignment or transfer of the property covered by this certification unless the new owner submits to the Department a written consent to all the terms and conditions of this certification.